

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2218 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHANUBEN SHANKARBHAI TULSIBHAI

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

HL PATEL ADVOCATES for Petitioner
RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Vijay Patel for M/s.H.L.Patel & Associations on behalf of the petitioner and learned A.G.P. Mr.D.P.Joshi, for respondent nos.1,2 & 3.

#. The detention order dtd.27.1.99 passed by the respondent no.1-Commissioner of Police, Surat City in exercise of power conferred under Sec.3 (1) of Gujarat Prevention of Anti Social Activity Act 1985 ("PASA" for

short) is challenged in the present petition under Article 226 of the Constitution of India.

#. The ground of detention supplied to petitioner under Sec.9 (1) of PASA, copy of which is produced at Annexure: C interalia indicate that about 14 cases of prohibition offences were registered against the petitioner in between 29.7.97 to 29.11.98 at different police stations and in each of the case country made liquor has been seized from the possession of the petitioner. The grounds further indicate that two witnesses on assurance of anonymity have supplied information against the petitioner pertaining to incidents dtd.15.11.98 and 9.12.99 . That in consideration of the said material respondent no.1 as detaining authority has concluded that petitioner is a "bootlegger" within the meaning of Sec.2 (b) of PASA. That enforcement of general provision of law being insufficient to prevent the petitioner from continuing his anti social activity which prejudicially affects the maintenance of public order, detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order suffers from infirmity of non application of mind by not considering the less drastic remedy like opposing or cancellation of bail available under Sec.437 (5) of Cr.P.C. and as such the order is bad in law.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134 Division Bench of this court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Sec.437 (5) of Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar. & A.L.Dave. JJ).

#. On perusal of ground of detention it disclose that while considering the alternative remedy the detaining authority has observed that petitioner is released in all 14 cases and after getting released on bail in the 1st case he is subsequently involved in Case No.2214 stated in the table annexed to the ground of detention. That cancellation of bail is likely to consume time on account of procedure to be followed and thereby in order to prevent the petitioner forthwith detention order is necessary. The said approach on the part of the

detaining authority cannot be said to be just or appropriate. As discussed hereinabove, the less drastic remedy of claiming cancellation of a bail in pending cases against the petitioner was available to sponsoring authority and at the instance of detaining authority the same could have been availed. However, detaining authority appears to have failed to consider the same and thereby subjective satisfaction reached is vitiated rendering the impugned order invalid.

#. As the petition succeed on the above stated ground alone, it is not necessary to consider other contentions raised.

#. On the basis of the aforesaid discussion, petition is allowed. Detention order dtd.27.1.99 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. Petitioner Bhanuben Shankarbhai Tulsibhai is ordered to set at liberty forthwith, if not required in any other case.

#. Rule to that extent made absolute.

kks